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IN THE COURT OF APPEAL

R.M. COURT CIVIL APPEAL NO. 43/64

BEFORE: The Hon. Mr. Justice Henriques, Ag. President
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Eccleston

BETWEEN LEONARD DAY & ERNEST DePASS - PLAINTIFFS/
APPELLANTS
A N D THE ATTORNEY GENERAL &) - DEFENDANTS/
VINCENT LLEWELLYN) RESPONDENTS

Mr. N. Hill for the Plaintiffs/Appellants

Mr. B.J. Scott for the Crown

29th July, 1966

HENRIQUES, Ag. P.,

When this matter came on for hearing it was pointed out to Counsel for the appellants that only one deposit for the plaintiffs/appellants had been made, when there were in fact two appellants, and the Court invited him to satisfy it that it had jurisdiction to proceed with the appeal.

Mr. Norman Hill for the appellants then submitted that this was a case of two executors to an estate appealing, and in their capacity of executors, they sue and are sued in a representative capacity. The estate is a single entity and notwithstanding that there are two executors concerned in the appeal, it is obligatory only to lodge one sum for the execution of the appeal and one sum for the payment of costs.

It was further submitted that all executors who have proved must join if an action is to be brought on behalf of the estate. He referred to Order 16, Rule 8 in the Annual Practice (1962 Edition.)

Mr. Scott for the Attorney General submitted that both appellants were required to give security in accordance with the provisions of Section 256, Chapter 179.

I have considered the submissions of Counsel, and am of the view that the provisions of Section 256 of Chapter 179 must be given a liberal construction, and that where an estate is represented

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by executors, then the requirements of that section, so far as it refers to the lodging of the security for the prosecution of the appeal and of security for the payment of costs are fulfilled by the lodgment of one sum in each case.

The Court, therefore, in my view has jurisdiction to entertain the appeal.

MOODY, J.A.,

I agree.

ECCLESTON, J.A. (Acting)

I also agree.